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PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Mohan Vishnupad et al.

Examiner: Brian P. Mruk

Serial No.: 09/730,627

Group: Art Unit 1751

Filed: December 6, 2000

Docket: 370-19

For: ANHYDROUS CREAMS,
LOTIONS AND GELS

Dated: August 18, 2003

RECEIVED
AUG 25 2003
TC 1700Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450AMENDMENT TRANSMITTAL FORM

Sir:

Transmitted herewith is an amendment in the above-identified application.

☐ Small entity status of this application under 37 C.F.R. § 1.9 and 1.27 has been established by a verified statement previously submitted.☐ A verified statement to establish small entity under 37 C.F.R. § 1.9 and 1.27 is enclosed.☒ No additional fee is required.

The fee has been calculated as shown below:

	(Col. 1)	(Col. 2)	(Col. 3)	SMALL ENTITY	OTHER THAN SMALL ENTITY
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA	ADDIT. RATE FEE	ADDIT. RATE FEE
				OR	
TOTAL	36* MINUS 36**	= 0	X 9 \$ 0	X 18 \$ 0	
INDEP.	3* MINUS 3**	= 0	X 42 \$ 0	X 84 \$ 0	
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEP. CLAIM			X 140 \$ 0	X 280 \$ 0	
			TOTAL	OR TOTAL	\$ 0
			ADDIT. FEE	\$ -0-	

* If the entry in Co. 1 is less than entry in Col. 2, write "0" in Col. 3.

** If the "Highest No. Previously Paid for" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The Highest No. Previously Paid For" (Total or indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 18, 2003.Dated: August 18, 2003
Peter DeLuca

- ☐ Please charge Deposit Account No. 50-2140 in the amount of \$____. Two (2) copies of this sheet are enclosed.
- ☐ A check in the amount of \$____ is enclosed.
- ☒ Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 50-2140. Also; in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 50-2140 therefor. TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,

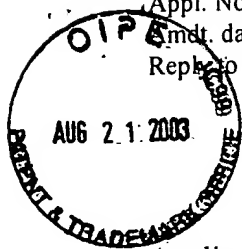


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Appl. No. 09/730,627
Indt. dated August 18, 2003
Reply to Office Action of August 30, 2003

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8/27/03

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RESPONSE

Sir:

In response to the Office Action mailed on March 18, 2003, reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1, 2, 5, 7-9 and 11-40 are pending in the application.

Claims 1, 2, 5, 7-9, 11-16, 21, 23, 24, 27-34 and 39 have been rejected under 35 U.S.C. §102(e) as being anticipated by, or obvious in view of Cen et al. U.S. Patent No. 6,428,799 (hereinafter referred to simply as "Cen"). These rejections are respectfully traversed.

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Dated: August 18, 2003


Peter DeLuca

Cen fails to teach or suggest compositions that are substantially anhydrous as that term is used in the present claims. As noted at page 3, lines 3-7, the term "substantially anhydrous" means that "no free water is added to the composition". The only water present, if any, in the presently claimed substantially anhydrous compositions is the water of hydration contained in the various components used to formulate the product. Rather than being substantially anhydrous, the Cen compositions referred to in the Office Action each include free added water.

The Office Action specifically mentions Examples 65, 66 and 67 of Cen. The formulations for these examples appear at column 61 of Cen. Water is the third ingredient in Part A of the applied Cen formulations. In example 65, 4.43% of free water is added and in each of Examples 66 and 67, 3.00% of free water is added. Thus, the Cen compositions are not substantially anhydrous as defined by Applicant.

During a telephone conference with the undersigned, the Examiner graciously elucidated his position by indicating that, in his view, the source of the water in the Cen examples was unclear, and that the water in the examples cited in the Office Action could be water of hydration rather than free added water. While the time and courtesies extended by the Examiner are appreciated, it is respectfully submitted based on a careful study of all the examples in the Cen reference that the Cen examples that specifically recite water as an ingredient refer to free water added to the formulation, rather than to water of hydration.

It is convention to those skilled in the art describing formulations in the cosmetic and/or pharmaceutical fields to list as ingredients only those ingredients that are actually added to the formulation. Cen appears to have followed this convention. Thus, many of the Cen examples affirmatively list water as a separate ingredient. In these examples, free added water is present.

Other Cen examples do not list water as an ingredient. See, for example, Cen examples 59 – 64 at column 60. One or more of the ingredients that are specifically listed may have a certain amount of water of hydration. However, convention dictates that water not be listed as an ingredient on the list, since free water is not being added. In fact, with respect to one ingredient, i.e., Sancure 2710, in accordance with accepted convention, Cen provides a footnote to explain that water is present in that ingredient at a level of 30%. Again, because convention dictates that only the ingredients actually added to the formulation be listed in an ingredients list, Cen lists “polyurethane latex in 50% isopropanol” in the table containing examples 59-64, and clarifies in a footnote that the ingredient includes water.

Thus, it must be concluded that when Cen lists water as an ingredient in a formulation, he is referring to free added water in accordance with the convention widely accepted by those skilled in the art. When Cen does not list water as an ingredient, there may perhaps be some water of hydration, but no free added water has been added. When a listed ingredient includes water, the ingredient is listed by Cen (in accordance with the widely accepted convention) and the components of the ingredient (including any water present) is noted in a footnote.

To the extent Cen is silent with respect to the source of water driven from the composition during preparation of “conditioning component for the articles” of the Cen disclosure (such as, for example, in the examples applied in the Office Action), the source of such removed water is irrelevant, provided free water was added as an ingredient during formulation. The presently claimed compositions include no free added water and are thus substantially anhydrous.

Nor is it seen where in Cen it is suggested that water can be excluded from the compositions disclosed therein. Rather, in Examples 65-67, Cen uses a polyacrylamide as a polymer gelling agent. However, Cen's polymeric gelling agents form hydrogels in a conventional manner which involves the use of water or other aqueous medium and/or neutralizing the polymers. For example, at column 31, line 64 through column 36, line 3 Cen discusses the "Hydrogel Forming Polymeric Gelling Agents" useful in his products. In comparison, at page 6, lines 6-9 of Applicants' specification it is noted that the ability to use a polyacrylamide without being dispersed in an aqueous media or neutralized is a surprising result of the present compositions. This surprising aspect of the present compositions is nowhere taught or suggested by Cen.

It is not surprising that Cen's compositions are not the same as applicants' compositions since the intended end uses of the compositions is quite different. Cen's compositions are intended for application to a substrate to produce a substantially dry, disposable personal care article. Applicant's compositions are intended for use as cosmetic or medicinal compositions for direct application to the skin of a user. While it appreciated that the intended uses are not recited in the claims presently being examined, consideration of the intended uses is believed relevant to a consideration of what one skilled in the art reading Cen would or would not find to be obvious.

Because Cen does not teach or suggest compositions which are substantially anhydrous, withdrawal of the rejections of claims 1, 2, 5, 7-9 and 11-40 in view of Cen is respectfully requested.

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Amdt. dated August 18, 2003
Reply to Office Action of August 30, 2003

In view of the foregoing, this application is believed to be in condition for allowance.

Such early and favorable action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter DeLuca', with a long horizontal flourish extending to the right.

Peter DeLuca
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